

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

SAMUEL VANDERGRIFF,

Plaintiff,

v.

Case No. 12-CV-10070
Honorable Denise Page Hood

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

**ORDER ACCEPTING REPORT AND RECOMMENDATION, GRANTING
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, AND DENYING
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Now before the Court is Magistrate Judge Charles E. Binder's Report and Recommendation. Plaintiff Samuel Vandergriff filed this action on January 9, 2012, asking the Court to review the Commissioner's decision denying his social security benefits. The parties filed cross motions for summary judgment. The Magistrate Judge recommends that the Court grant Defendant's Motion for Summary Judgment and deny Plaintiff's Motion for Summary Judgment. The Magistrate Judge found that there was substantial evidence on the record to support the administrative law judge's (ALJ) finding that Plaintiff is not disabled.

The Court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.* Judicial review of the Commissioner's decision is limited to determining whether the findings of fact made by the Commissioner are supported by substantial evidence and whether the Commissioner used the proper legal criteria in reaching the conclusion. *Garner v.*

Heckler, 745 F.2d 383 (6th Cir. 1984). “Substantial evidence is more than a scintilla of evidence but less than a preponderance and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Brainard v. Sec. of Health and Human Serv.*, 889 F.2d 679, 681 (6th Cir. 1989). The Court may not conduct a *de novo* review, resolve conflicts in the evidence, or decide issues of credibility. *Garner*, 745 F.2d at 787. Therefore, the ALJ’s credibility findings should not be discarded lightly and must be accorded great deference. *Hardaway v. Sec. of Health and Human Serv.*, 823 F.2d 922, 928 (6th Cir. 1987). A finding of substantial evidence must be based on the record as a whole. *Gardner*, 754 F.2d at 388. The Commissioner’s decision must be upheld if it is supported by substantial evidence even if the record might support a contrary decision. *Smith v. Sec. of Health and Human Serv.*, 893 F.2d 106, 108 (6th Cir. 1989). The decision must be affirmed even if the Court might arrive at a different conclusion. *Mullen v. Bowen*, 800 F.2d 535, 545 (6th Cir. 1986) (quoting *Baker v. Heckler*, 730 F.2d 1147, 1150 (8th Cir. 1984)).

Neither party has filed an objection to the Magistrate Judge’s Report and Recommendation. A party’s failure to file any objections waives his or her right to further appeal. *Smith v. Detroit Fed’n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Necessarily, a party’s failure to object to a report and recommendation relieves the Court from its duty to review the matter independently. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). In the absence of an objection to the Report and Recommendation, the Court deems any objections waived and accepts the Magistrate Judge’s recommendation in its entirety.

Accordingly,

IT IS ORDERED that the Report and Recommendation [Docket No. 15, filed December 4, 2012] is **ACCEPTED** as this Court’s findings of fact and conclusions of law.

IT IS FURTHER ORDERED that Defendant’s Motion to Dismiss [Docket No. 13, filed

July 18, 2012] is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment [Docket No. 10, filed April 16, 2012] is **DENIED**.

IT IS FURTHER ORDERED that this action is **DISMISSED**.

IT IS SO ORDERED.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: January 24, 2013

I hereby certify that a copy of the foregoing document was served upon counsel of record on January 24, 2013, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry
Case Manager